

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUBREGION 33

SODEXHO AMERICA, L.L.C.

Employer¹

and

Case 33-RD-868

SUSAN M. GRAHAM, an Individual

Petitioner

and

SERVICE WORKERS UNITED, UNITE HERE,
LOCAL 2552/SEIU LOCAL 2552

Union²

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, Sodexho America, L.L.C., is a Delaware limited liability corporation engaged in providing food service to Eureka College in Eureka, Illinois. The Petitioner, Susan M. Graham, filed an RD petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union, Service Workers United, Unite Here, Local 2552/SEIU Local 2552, as the collective-bargaining representative of all full-time and part-time food service workers regularly scheduled for 20 or more hours employed by the Employer at Eureka College, Eureka, Illinois. A hearing officer of the Board held a hearing and the Union filed a brief with me.³

As evidenced at the hearing and in the brief, the parties disagree on whether the

Employer's voluntary recognition of the Union serves as a bar to the instant

¹ The Employer's name appears as amended at hearing. ² The Union's name appears as amended at hearing. ³ The Employer and the Petitioner did not file briefs.

decertification petition. The Union and the Employer agree that further proceedings are barred. Petitioner desires an election. I have considered the evidence and arguments presented by the parties on the sole issue in dispute and I find that the Employer's voluntary recognition bars further processing of the petition because a reasonable time to bargain had not elapsed at the time the petition was filed. Accordingly, the petition must be dismissed.

FACTUAL OVERVIEW

The Employer voluntarily recognized the Union on November 21, 2005, after a neutral third party verified that a majority of the bargaining unit employees had signed authorization cards designating the Union as their collective-bargaining representative. Although the parties attempted to promptly schedule negotiations for the initial contract, commencement of negotiations was delayed due to scheduling conflicts and the extended illness of the Employer's chief negotiator. The parties held their first meeting on April 4, 2006. By the end of two consecutive days of lengthy negotiating sessions, the Employer and the Union had reached tentative agreement on all non-economic contract terms and on health insurance; had exchanged counter-proposals on economic terms, and had agreed that they could probably complete negotiations in one more session. The parties agreed to meet again on either April 24 or 28. Again, more scheduling conflicts and a medical emergency intervened to delay negotiations. The Employer delivered a counter-proposal to the Union on June 27, further narrowing the gap between the parties' economic positions. The instant petition was filed on June 29. The parties thereafter scheduled another negotiating session for July 24, after the date of the hearing in this matter. At hearing, both the Employer's representative and the

Union's representative testified that due to the limited number of issues remaining and the narrow gap between the parties' positions, they believed it likely they would reach an agreement at this session, and, if they did not, they expected another session to be scheduled.

ANALYSIS

It is well established that an employer's lawful voluntary recognition of a union bars a decertification petition for a reasonable period in order to give the parties time to negotiate a collective-bargaining agreement. See *Seattle Mariners*, 335 NLRB 563, 564 (2001); *MGM Grand Hotel*, 329 NLRB 464 (1999); *Keller Plastics Eastern, Inc.*, 157 NLRB 583 (1966). This reasonable period of time is not measured by the number of days or months spent in bargaining, but by what has occurred and what was accomplished in the bargaining sessions. *Ford Center for the Performing Arts*, 328 NLRB 1 (1999). The Board examines the unique circumstances underlying the parties' recognition and bargaining to determine whether they have had sufficient time to reach an agreement. In so doing, the Board considers the degree of progress made in negotiations; whether or not the parties were at impasse; and whether the parties were negotiating for an initial contract. *MGM Grand Hotel*, *supra*; *Keller Plastics Eastern, Inc.*, *supra*.

An examination of the circumstances underlying the recognition and bargaining at issue here establishes that the Employer and Union have not been afforded a reasonable time to bargain and that the recognition bar should apply. The Employer in good faith, and based on a demonstrated showing of majority status, lawfully recognized the Union as bargaining representative of its employees. The parties' efforts to promptly schedule negotiations for bargaining of the initial contract began almost immediately but, medical issues and scheduling conflicts arose and resulted in delays in getting to the bargaining table. No party contends that the Employer and the Union have not been diligent in their efforts to schedule negotiations.

Despite the difficulties in meeting, the Employer and the Union have made great progress towards reaching a contract, such that both parties expect that only one more bargaining session should result in a tentative contract. Clearly with these expectations, impasse is not imminent. Moreover, under the circumstances, the Employer and Union have made remarkable progress, especially considering they are negotiating an initial contract, which the Board has recognized is more difficult. See *Ford Center for the Performing Arts*, supra. Thus, considering the substantial progress made in negotiations for the initial contract and the expectation that an agreement is imminent despite the unique difficulties in scheduling meetings, I find that a reasonable period of time for bargaining had not elapsed before the filing of the petition in this case. In reaching this conclusion, I have considered that 7 months has elapsed between recognition and the filing of the petition and do not find this dispositive under the circumstances. I note that the Board concluded in *Ford Center*, supra, that 9 months was not a reasonable period of time for negotiations and dismissed the petition of an intervener. In *Blue Valley Machine & Mfg. Co.*, 180 NLRB 298, 304 (1969), the Board found that 8 months did not constitute a reasonable time to bargain where the parties were engaged in bargaining over an initial contract. Accordingly, I find that the instant petition is barred by the Employer's voluntary recognition of the Union and must be dismissed.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The labor organization involved in this proceeding claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

ORDER

The Petition filed in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **August 16, 2006**. The request may **not** be filed by facsimile.

E-Filing: In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

Dated: August 2, 2006
at: St. Louis, Missouri

/s/ Ralph R. Tremain
Ralph R. Tremain, Regional Director,
National Labor Relations Board, Region 14 and
Subregion 33